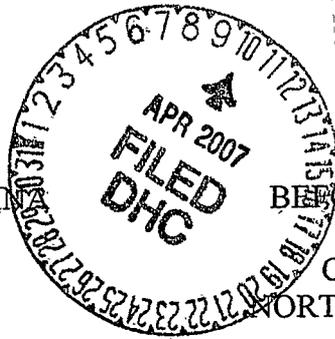


7216



STATE OF NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 06 DHC 34

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN G. MCCORMICK,

Attorney,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE**

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, and members Theodore C. Edwards and Michael J. Houser. Katherine E. Jean represented plaintiff, the North Carolina State Bar. Defendant John G. McCormick was not represented by counsel and did not appear. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.
2. Defendant, John G. McCormick, (hereinafter "McCormick"), was admitted to the North Carolina State Bar on August 22, 1976, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all or a portion of the relevant periods referred to herein, McCormick was actively engaged in the private practice of law in the town of Chapel Hill, Orange County, North Carolina.

4. Plaintiff attempted to serve McCormick by certified mail at the address McCormick provided to the State Bar. The State Bar also attempted to serve McCormick by certified mail at two additional addresses. The State Bar attempted to serve McCormick by personal service by the Orange County Sheriff. When none of those efforts was unsuccessful, McCormick was served by publication.
5. Between June 2 and June 27, 2006, McCormick closed the sale of five tracts of real property owned by D. R. Horton Inc., ("D. R. Horton") to various buyers ("the June closings").
6. Pursuant to the closing instructions in each of the June closings, McCormick was to disburse a total of \$802,185.82 from the June closings to D.R. Horton.
7. After making all appropriate disbursements from the sales proceeds for ordinary costs associated with real estate closings, such as real estate commission checks and title insurance premiums, McCormick retained and held in trust for the benefit of D.R. Horton \$802,185.82.
8. D.R. Horton did not authorize McCormick to apply the \$802,185.82 for McCormick's own use or benefit or for the use or benefit of any third party.
9. D.R. Horton instructed McCormick to deliver the \$802,185.82 to D.R. Horton.
10. McCormick failed to deliver any of the \$802,185.82 from the June closings to D. R. Horton.
11. D.R. Horton made numerous efforts to communicate with McCormick about the funds owing to D.R. Horton from the June closings.
12. McCormick avoided D.R. Horton's attempts to communicate with McCormick about the proceeds of the June closings. McCormick exited by the back door of his law office when he learned that an attorney sent by D.R. Horton to confront him about the funds was waiting to see him.
13. McCormick applied the \$802,185.82 for his own use and benefit or applied it for the use and benefit of a third party without authorization.
14. McCormick misappropriated the \$802,185.82.
15. In addition to the \$802,185.82 misappropriated from D.R. Horton, between January 1, 2006 and July 13, 2006 McCormick applied at least \$256,498.00 in funds held in his trust account for the benefit of at least four other clients to his own use or benefit or to the use or benefit of a third party.
16. The beneficial owners of the \$256,498.00 did not authorize McCormick to apply the funds to his own use or benefit or to the use or benefit of any third party.

17. McCormick misappropriated the \$256,498.00.
18. McCormick's misappropriation of the \$802,185.82 and of the \$256,498.00 was willful and intentional.
19. McCormick embezzled the \$802,185.82 and the \$256,498.00.
20. On or about July 10, 2006, McCormick disappeared.
21. On or about July 11, 2006, McCormick abandoned his automobile in Durham, North Carolina.
22. McCormick has not returned to his law practice since July 11, 2006.
23. McCormick abandoned his law practice.

Based upon the preceding findings of fact, this Hearing Committee makes the following

CONCLUSIONS OF LAW

1. By fraudulently, willfully, and knowingly converting \$802,185.82 which he held in trust for D.R. Horton, and by using those funds for his own benefit or for the benefit of third persons without authorization from D.R. Horton, McCormick used entrusted property for his personal benefit or for the benefit of third parties without authorization in violation of Rule 1.15-2(j), engaged in criminal conduct, embezzlement, that reflects adversely on his honesty, trustworthiness, or fitness to practice in violation of Rule 8.4(b), intentionally harmed his client during the course of the professional relationship in violation of Rule 8.4(g), and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c).
2. By fraudulently, willfully, and knowingly converting at least \$65,000.00 (proven at trial to be at least \$256,498.00) held by him in his trust account for clients other than D.R. Horton for his own use or benefit or for the use or benefit of third parties without authorization from the beneficial owners of the funds, McCormick used entrusted property for his personal benefit or for the benefit of third parties without authorization in violation of Rule 1.15-2(j), engaged in criminal conduct, embezzlement, that reflects adversely on his honesty, trustworthiness, or fitness to practice in violation of Rule 8.4(b), intentionally harmed his client during the course of the professional relationship in violation of Rule 8.4(g), and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing findings of fact and conclusions of law, the Hearing Committee makes by clear, cogent, and convincing evidence, the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. On January 6, 2006, McCormick misappropriated \$62,500.00 delivered to him in trust for the benefit of his client, Diamond Springs Water.
2. At the time McCormick abandoned his law practice, the total balance in McCormick's trust accounts at Suntrust Bank, accounts numbers 20117477 and 201058444, was at least \$1,125,335.30 less than the amount that should have been held on deposit in those accounts for the benefit of clients.
3. McCormick embezzled entrusted funds belonging to at least six clients.
4. Defendant's misconduct is aggravated by the following factors:
 - a. dishonest or selfish motive;
 - b. a pattern of misconduct;
 - c. multiple offenses;
 - d. vulnerability of one or more of the victims; and
 - e. substantial experience in the practice of law.
5. Defendant's misconduct is mitigated by the following factor:
 - a. absence of a prior disciplinary record.
6. The aggravating factors outweigh the mitigating factor.
7. A lawyer's duty to preserve a client's funds entrusted to the lawyer is one of the most sacred duties that a lawyer undertakes. A lawyer should never violate that duty or the trust the client has placed in the lawyer. McCormick violated that trust repeatedly by misappropriating entrusted funds from multiple clients over an extended period of time.
8. McCormick's misconduct caused significant harm to his clients. Each client from whom McCormick embezzled entrusted funds suffered substantial, actual harm. In addition to loss of embezzled funds, D.R. Horton expended at least \$30,000.00 in attorney fees to address related problems caused by the embezzlements.
9. Defendant's misconduct caused significant harm to the legal profession. McCormick's theft of entrusted funds and abandonment of his law practice was widely reported in the news media. Clients of D.R. Horton who had purchased D.R. Horton homes in closings conducted by McCormick and who were aware of the media reports contacted D.R. Horton expressing concern about whether their transactions had been

handled appropriately and about whether they would suffer negative repercussions from McCormick's actions. The State Bar's Client Security Fund is expected to pay in excess of \$19,000.00 at its April, 2007 meeting to compensate damaged clients of McCormick. It is unknown whether the Client Security Fund will pay claims at future meetings. The State Bar has paid in excess of \$53,000.00 to compensate the trustee and administrative personnel retained to wind down McCormick's law practice. This expenditure was necessary to protect the interests of McCormick's abandoned clients. The Client Security Fund payments and the payments to the trustee and administrative personnel are funded by dues and assessments paid by members of the Bar.

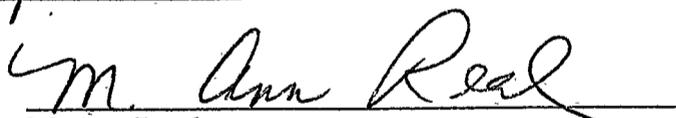
10. This Hearing Committee has considered all alternatives and finds that no discipline other than disbarment will adequately protect the public and the profession given the clear demonstration of misappropriations of multiple clients' funds over a period of at least six months and the pattern of dishonesty established by the evidence. Entry of an order imposing discipline less than disbarment would fail to acknowledge the seriousness of the offenses committed by defendant and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing findings of fact, conclusions of law and additional findings of fact regarding discipline, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. John G. McCormick is hereby DISBARRED from the practice of law.
2. McCormick shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him.
3. McCormick shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar, including DHC costs and including the appearance fee of the court reporter at this hearing, within 90 days of service upon him of the statement of costs by the Secretary.
4. McCormick shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").

Signed by the Chair with the consent of the other hearing committee members,
this the 10th day of April, 2007.


M. Ann Reed
Chair, Disciplinary Hearing Committee